

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**RICHARD STEEN AND
JEFF BEHRENS**
Montgomery County, IA

ADMINISTRATIVE ORDER
NO. 2008-AFO- 011

TO: Richard Steen
1150 US Hwy 34
Emerson, IA 51533

Jeff Behrens
15624 Timber Ave.
Glidden, IA 51443

I. SUMMARY

This Order requires you to (1) pay a penalty of \$8,000.00 within 60 days of the receipt of this Order; and (2) submit plans for controls in accordance with 567 IAC 65.103(4) within 30 days of the date from which the Director signs this Order and install manure controls within 90 days of the date from which the Director signs this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Thad Nantito, Field Office #4
Iowa Department of Natural Resources
706 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to appeal rights:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Appeal, if any, addressed to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459A and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Jeff Behrens owned an animal feeding operation that was operated by Richard Steen. The animal feeding operation consisted of an open cattle feedlot located in the SW ¼ of the SW ¼ north of the Hwy. Section 20, T72N, R39 W, Montgomery County. The feedlot has an animal capacity of approximately 850 animal units. Mr. Behrens owned the cattle feedlot and the property surrounding the feedlot was owned by Mr. Steen. It is believed that since the time of the violations cited in this Order, that the feedlot has been sold on contract to another party.

2. On March 9, 2007, Thad Nanfito, environmental specialist for DNR Field Office 4, investigated multiple complaints the field office had received concerning manure runoff onto old Highway 34. Mr. Nanfito inspected the Behrens/Steen feedlot and confirmed that manure from the feedlot was being discharged onto old Highway 34. At the time of the investigation a county worker was placing warning signs on the road and was attempting to remove the manure from the road and ditches. Mr. Nanfito also documented that manure from the feedlot was flowing separately into two directions towards unnamed tributaries of Indian Creek (west) and Crabapple Creek (east). The east drainage manure structure was found breeched with a channel cut through the entirety of the crop field. A discharge was also observed from the west drainage into a road ditch. Discharge samples were taken at the property lines. Laboratory samples were also taken upstream and downstream of the point of discharge into each of the creeks. The laboratory results are as follows:

Location	Biological Oxygen Demand (BOD)	Ammonia Nitrogen (NH3)	Total Suspended Solids (TSS)	Fecal Coliform
Southwest Discharge	18,000 mg/l.	1300 mg/L	450,000 mg/l.	3,500,000/100ml.
Downstream Southwest Lot	780 mg/L	75 mg/L	9,800 mg/L	150,000 /100mL
Upstream Southwest Lot	Less than 5 mg/L	25 mg/L	5,000 mg/l.	81/100mL
East Discharge	4,000 mg/L	0.56 mg/L	160 mg/L	1,300,000/100mL
Downstream East Lot	350 mg/L	300 mg/l.	84,000 mg/l.	100,000/100ml.
Upstream East Lot	15 mg/L	1.0 mg/L	1,800 mg/L	320 /10ml.

3. On March 10, 2007, Mr. Steen was contacted via phone and notified that DNR Field Office 4 had documented significant discharges and notified him that he would need to take steps to stop them. Mr. Steen stated that he would contact someone with a bulldozer and have them plug the areas of discharge. A visit to the site confirmed that the breach in the east basin had been filled and soil had also been placed at the north corner of the basin to increase capacity. Mr. Steen was also instructed to continue to remove manure as needed to prevent further discharges.

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4. On March 12, 2007, a follow-up visit was conducted to verify that the manure discharge from the west pen had been stopped. Mr. Steen was contacted at the time of the visit and again instructed to remove solids from areas that would have the potential to discharge.

5. On March 13, 2007, a follow-up visit was conducted to observe conditions in Crabapple Creek. Specifically, whether there was a fish kill. No fish kill was observed at the time. Mr. Steen stated that he had tried that morning to remove manure from the road ditch which borders the highway and along the fence line where manure had discharged to the roadway, however, he said the equipment would not work in these areas. He was instructed to clear the road ditches, waterways, and otherwise make efforts to reduce the potential for a discharge by Friday, March 16, 2007.

6. On March 20, 2007, DNR Field Office 4 Environmental Specialists Jerry Jordinson, Keith Wilken, and Chad Nanfita met with Mr. Behrens and Mr. Steen at the facility to discuss actions required to bring the feedlot into compliance, as well as review efforts to remove manure as was previously directed. During the visit, the environmental specialists observed that the west pen had been scraped and areas were bermed to prevent surface runoff from portions of the lot. The area at the southwest corner of the pen did not have any interim control and the drainage in this area would flow directly to the road ditch/culvert. The cattle had been moved from this pen and Mr. Behrens stated he did not plan to restock this pen. Manure was found in the waterway east of the facility and in the road ditch bordering the west pen. Mr. Steen stated he could not get equipment in these areas. Mr. Behrens and Mr. Steen were also instructed that stalk bales could be placed in the waterways to prevent further discharge. Mr. Behrens stated that he believed he could remove manure from the east waterway during the night when the ground firmed up. During the visit, Mr. Steen began scraping manure from the waterway.

7. On March 21, 2007, Mr. Steen informed DNR Field Office 4 that a large amount of manure had been removed from the waterway. He stated that they had also placed stalk bales in the waterway. He also stated that he had contacted Shawn Shouse, ISU Extension, and that Mr. Shouse would visit the site on Monday, March 26, 2007, in an effort to evaluate the facility and provide direction for adequate controls and compliance.

8. On March 30, 2007, a report of investigation and Notice of Violation letter were sent via certified mail to Mr. Behrens and Mr. Steen. The letter required that manure be removed from the manure structure, pens, road ditches, and waterways by April 1, 2007. It also required submission of a plan for controls by June 1, 2007 with implementation by August 1, 2007. To date, no information regarding planned controls has been provided to DNR Field Office 4.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants to a water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. A permit has not been issued for this facility and DNR Field Office 4 found evidence of a discharge of untreated pollutants into a water of the state. The above-facts indicate a violation of this provision.

2. Iowa Code section 459A.401(1) states the minimum level of manure control for any open feedlot shall be the removal of settleable solids from the manure prior to discharge into a water of the state. The manure basin serving the majority of drainage for the east pens was found breeched and actively discharging large volumes of manure liquids and solids to unnamed tributaries of Crabapple and Indian Creeks. The above-facts indicate a violation of this provision.

3. 567 IAC 61.3(2) states that such waters shall be free from substances attributable to point source wastewater discharges that will settle to form sludge deposits; such waters shall be free from substances attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions; and such water shall be free from substances attributable to wastewater discharges or agricultural practices in concentration or combinations which are acutely toxic to human, animal, or plant life. Lab analysis results of water samples collected during the investigation indicated the presence of animal wastes, best exemplified by the relatively high concentration of ammonia in the creek. The above-facts indicate a violation of this provision.

4. 567 IAC 65.101(1) states that all settleable solids from open feedlot effluent shall be removed prior to discharge into a water of the state. Mr. Steen did not remove all solids from areas that would have the potential to discharge and the discharge flowed from the open feedlot into two creeks. The above-mentioned facts indicate a violation of this provision.

5. 567 IAC 65.101(9) states in part that a release as defined in 65.100, shall be reported to the DNR as soon as possible but no later than six hours after the onset or discovery of the release. The DNR was not notified of the manure release. However, responsible individuals were aware of the release both to the road ditch and to the creeks. The above-mentioned facts indicate a violation of this provision.

6. 567 IAC 65.103(4) states that if the DNR's evaluation determines that manure from an animal-feeding operation is causing or may reasonably be expected to cause pollution of a water of the state, the operation shall institute necessary remedial actions to eliminate the condition if the operation receives a written notification from the DNR of the need to correct the condition. Mr. Steen and Mr. Behrens received a written NOV notifying

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them that they were causing pollution to a water of the state and they needed to correct the condition.

V. ORDER

THEREFORE, in order to redress the above-cited violations, it is hereby ordered that Mr. Steen and Mr. Behrens do the following:

1. Mr. Steen and Mr. Behrens shall pay a penalty of \$8,000.00 within 60 days of the receipt of this Order;
2. Mr. Steen and Mr. Behrens must submit proof to DNR Field Office 4 that they no longer own or operate the facility; and
3. If Mr. Steen and Mr. Behrens are still working with the facility they must submit plans for controls in accordance with 567 IAC 65.103(4) within 30 days of the date from which the Director signs this Order and install manure controls within 90 days of the date from which the Director signs this Order.

VI. PENALTY

1. Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC Chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$8,000.00 is assessed effective 30 days from receipt of this Order by Richard Steen and Jeff Behrens, unless this Order is appealed within that time, as provided in Part VII of this Order. The penalty shall be paid within 60 days of receipt of this Order, unless a timely appeal is filed.

2. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. The Environmental Protection Commission has adopted procedures and criteria for assessment of penalties through 567 IAC Chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty of \$8,000. The administrative penalty is assessed to Richard Steen and Jeff Behrens, jointly and severally liable. The administrative penalty by this Order is determined as follows:

Economic Benefit – Failing to construct and maintain manure controls results in a monetary gain from the interest collected on the money saved by delaying the installation of controls. In addition, it is unclear if the manure is utilized to benefit farmable land that Mr. Steen owns, operates, or has interest in. If in fact Mr. Steen has no interest in the manure as a valued nutrient, it thus becomes a costly byproduct of the production operation using fuel, equipment, and labor without return. The manure released to the stream would therefore result in cost savings. As a result, an economic benefit of at least \$2,000 is estimated. Therefore, a penalty of \$2,000 is assessed for this factor.

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Gravity of the Violation – Failure to install and properly maintain manure controls at an open feedlot threatens the integrity of the regulatory program. In addition, the manure release contributed to documented water quality violations as well as a significant aesthetic impact to two streams. Therefore, a penalty of \$3,000 is assessed for this factor.

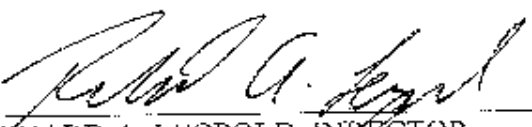
Culpability It appeared that this facility had previous discharges prior to the investigation, given the erosion cut which followed a path from the east manure storage structure to the channelized waterway. In addition, the two terraces for the west drainage flowed directly to a road ditch with a defined cut. The manure release to the roadway shows deliberate neglect and obvious lack of consideration for public safety. Mr. Steen and Mr. Behrens have an obligation to be aware and comply with all applicable DNR regulations regarding animal feeding operations. As a result, a penalty of \$3,000 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175 and 567 IAC 7.5(1), a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC Chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V. of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 459A.502 and 455B.191. The DNR reserves the right to request that the Attorney General initiate legal action based on the violations alleged in this Order as well as any subsequent violations if this Order is violated, including failure to timely pay any penalty.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 19 day of
Feb., 2008.

No File #: Kelli Book; DNR Field Office 4:Thad Naulto; VIII.D.1.b